

*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
APPENDIX**



**ORIGINAL** **75-1044**

**United States Court of Appeals**

**For the Second Circuit.**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

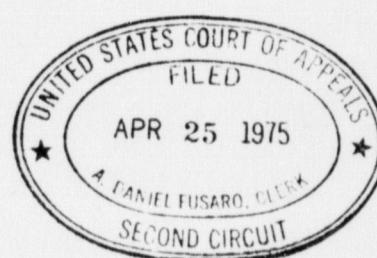
ROBERT ALAN KESTENBAUM,

Defendant-Appellant.

*On Appeal From The United States District  
Court For The Eastern District Of New York*

**Appellant's Appendix**

IRVING E. FIELD  
Attorney for Defendant-Appellant  
310 Madison Avenue  
New York, N.Y. 10017  
(212) MU 7-5018



**PAGINATION AS IN ORIGINAL COPY**

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~~REDACTED~~ 100  
CRIMINAL DOCKET

74CR 687

**PLATT, J.**

CRIMINAL DOCKET		TITLE OF CASE  THE UNITED STATES	ATTORNEYS  JOHNSON
vs.	For U. S.:		
ROBERT ALAN KESTENBAUM		For Defendant:	
<p style="text-align: center;">FEB 1968</p>			

Did possess Cannabis

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,	1,000 00	1-27-75	P. M. H. & A. Co.	5 -	
Clerk,		1-28-75	Paid to Clerk.		5 -
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

A circular postmark from the United States Post Office. The outer ring contains the text "UNITED STATES POST OFFICE" at the top and "APRIL" at the bottom. The center features a portrait of George Washington with the date "APR 24 1975" below it.

DATE	PROCEEDINGS
11/1/74	Information filed
11/8/74	Before PLATT, J.- Case called- Deft and counsel Irving Field present- Deft after being advised of his rights by the court and on his own behalf entered a plea of guilty- sentence adjd without date- bail contd- bail limits extended to include N.Y. State
1-10-75	Before PLATT, J - case called - adjd to Jan. 17, 1975.
1/17/75	Before PLATT, J.- Case called- Deft and counsel present- Deft sentenced pursuant to T-18, U.S.C. Sec. 5010(d) and 3651, and committed for treatment and supervision at a Youth Center for a term of 1 year, deft to be confined for a period of 2 months, execution of the remainder of the sentence suspended and the defendant is placed on probation pursuant to T-18, U.S. Sec. 5010(a) for a period of 3 years. Deft fined \$1,000.00 and Execution

74CR 687

GSA DC 72-14455

FILED  
IN CLERK'S OFFICE  
RJD:HGJ 455 DISTRICT COURT E.D. NY  
741894 \*

NOV 1 1974 \*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA

-against-

ROBERT ALAN KESTENBAUM,

Defendant.

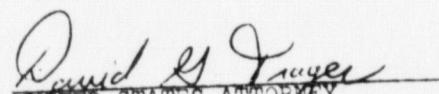
-----x  
INFORMATION

Cr. No.  
21 U.S.C. §844(a)

THE UNITED STATES ATTORNEY CHARGES:

On or about the 21st day of June 1974, within the Eastern District of New York, the defendant ROBERT ALAN KESTENBAUM did knowingly and intentionally possess a quantity of Cannabis sativa L., a Schedule I controlled substance, which possession was not pursuant to a valid prescription or order from a practitioner acting in the course of his professional practice and which possession was not authorized by any subchapter of the Narcotics Control Act of 1970.

(Title 21, United States Code, Section 844(a).)

  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

UNITED STATES MAGISTRATE

Eastern DISTRICT OF New York

RECORD OF PROCEEDINGS IN CRIMINAL CASES

74 M927

BEFORE Honorable MAX SCHIFFMAN

(Name of magistrate)

225 Cadman Plaza E., B'klyn, NY

(Address)

MAGISTRATE'S  
DOCKET No. 74 CASE No. 927  
THE UNITED STATES  
vs.

ROBERT ALAN KESTEN-  
BAUM

Complaint filed on June 22, 1974, by John Mullen  
Official title S/A DEA, charging violation of  
United States Code, Title 21, Section 841(a), on June 21,  
1974, at \_\_\_\_\_ in the \_\_\_\_\_  
division of the Eastern district of New York  
as follows: did smuggle approximately two liters of  
hashish and 1/2 kilo of solid hashish into the  
US at JFK International Airport.

(Here insert brief summary of facts constituting offense charged)

WARRANTS OR SUMMONS ISSUED:

Date Warrant/Summons for

(Name of defendant)

to (name and title of officer)

Substance of return

Date Warrant/Summons for

(Name of defendant)

to (name and title of officer)

Substance of return

PROCEEDINGS ON FIRST PRESENTATION OF ACCUSED TO MAGISTRATE:

Date June 22, 1974 Arrested by Complainant

{ on warrant of \_\_\_\_\_  
(Name of issuing officer)  
without warrant.

Appearances { for United States F. Sheerin

(Name)

(Address)

{ for accused I.E. Field, Esq. (Ret) 310 Madison Ave., NY, NY 10017

(Name)

(Address)

Proceedings taken

(Here insert with dates, when appropriate, a seriatim account of essential steps taken at hearing such as "complaint prepared,"  
DEFENDANT INFORMED OF COMPLAINT AND RIGHT TO RETAIN COUNSEL.

if arrest is without warrant: "defendant informed of complaint and right to retain counsel and preliminary hearing"; "preliminary examination waived."

U.S. MAG. FORM #1 ATTACHED NOTICE OF APPEARANCE ATTACHED.

if that is the fact: any adjournments taken, etc.

PRELIMINARY HEARING WAIVED.

Outcome HELD FOR THE DISTRICT COURT.

signed by deft and father.

Bail fixed June 22, 1974 Amount, \$25,000PRB/ Bonded , 19 , by cash

deposited by (name) Address

transmitted to clerk of district court , 19 [or] by surety

(name) Address

(name) Address , who

justified by affidavit dated , 19 [or] committed to

on , 19

SUBPOENAS FOR WITNESSES ISSUED:

, 19 , for (name of witness)  
at request of (name of party)  
Substance of return

, 19 , for (name of witness)  
at request of (name of party)  
Substance of return

, 19 , for (name of witness)  
at request of (name of party)  
Substance of return

PRELIMINARY EXAMINATION:

(Not to be used if case was disposed of at first presentation)

Date Appearances for

{ United States (Name)  
(Address)  
Accused (Name)  
(Address)

WITNESSES FOR UNITED STATES: (List names and addresses)

WITNESSES FOR ACCUSED:

(List names and addresses)

Witness payroll containing names certified to United States Marshal for payment , 19  
Proceedings taken

Outcome

Bail fixed , 19 Amount, \$ Bonded , 19 , by cash  
deposited by (name) Address

transmitted to clerk of district court , 19

[or] by surety (names) Address

and Address

who justified by affidavit , 19 Committed to

on , 19

Certified to be a correct transcript.

Made this 25 day of June , 19 74

Transmitted to Clerk of United States District Court for the Eastern  
district of New York , June 25, , 19 74.

*Max Schiffman*  
MAX SCHIFFMAN

United States Magistrate.

April 1973

PEDIGREE SHEET

74M927

- 1) Name of Defendant ROBERT ALAN KESTENBAUM Age 24  
Residence 60 PALMER AVE., SCARSDALE, N.Y. Occupation Exporter  
Citizen of U.S.A. Marital Status Single
- 2) Name of Defendant \_\_\_\_\_ Age \_\_\_\_\_  
Residence \_\_\_\_\_ Occupation 74M927  
Citizen of \_\_\_\_\_ Marital Status \_\_\_\_\_
- 3) Name of Defendant \_\_\_\_\_ Age \_\_\_\_\_  
Residence \_\_\_\_\_ Occupation \_\_\_\_\_  
Citizen of \_\_\_\_\_ Marital Status \_\_\_\_\_
- 4) Name of Defendant \_\_\_\_\_ Age \_\_\_\_\_  
Residence \_\_\_\_\_ Occupation \_\_\_\_\_  
Citizen of \_\_\_\_\_ Marital Status \_\_\_\_\_
- 5) Name of Defendant \_\_\_\_\_ Age \_\_\_\_\_  
Residence \_\_\_\_\_ Occupation \_\_\_\_\_  
Citizen of \_\_\_\_\_ Marital Status \_\_\_\_\_
- 6) Name of Defendant \_\_\_\_\_ Age \_\_\_\_\_  
Residence \_\_\_\_\_ Occupation \_\_\_\_\_  
Citizen of \_\_\_\_\_ Marital Status \_\_\_\_\_
- Date of Offense 6/21/74 Title <sup>21</sup> U.S.C., § 841(a)

Statement of Offense

The defendant did attempt to smuggle approx. two liters of liquid hashish and 1/2 kilo of solid hashish into the United States at John F. Kennedy International Airport.

John P. Muller  
Complainant.

Sworn to before me this  
22 day of June 1974

Mac Deffea  
U.S. Magistrate E.D.N.Y.

Bail \$250 Bond 450 Hearing date W/M Bondsman Jerry Kestenbaum  
Bondsman's Address Scarsdale, N.Y.

TPRFJS:om

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

-against-

ROBERT ALAN KESTENBAUM,

Defendant.

- - - - - X

EASTERN DISTRICT OF NEW YORK, SS:

74 M927

JOHN MULLEN, being duly sworn, deposes and says that he is a Special Agent, Drug Enforcement Administration, United States Department of Justice, duly appointed according to law and acting as such.

On or about the 21st day of June 1974, within the Eastern District of New York, the defendant, ROBERT ALAN KESTENBAUM, did knowingly and wilfully possess with the intent to distribute, approximately two liters of liquid hashish, a Schedule I controlled substance in violation of Title 21, United States Code, §841(a).

The source of your deponent's information and the grounds for his belief are:

(1) A statement made to your deponent by Edwina Bianci, a Customs Inspector, that when ROBERT ALAN KESTENBAUM presented himself for inspection to enter the United States at John F. Kennedy Airport, an examination of his suitcase revealed two one liter tin cans labeled "apricots". A further inspection by the aforementioned Customs Inspector which revealed that the aforementioned cans contained a substance which appeared to be other than apricots. A further statement made by the aforementioned Customs Inspector which revealed that she performed a field test on the liquid contained within the "apricot" cans and that said field test resulted in a positive showing for hashish.

2.

(2) A further search of the aforementioned defendant,  
ROBERT ALAN KESTENBAUM which revealed that his shoes contained  
approximately 1/2 kilo of hashish in the solid form.

WHEREFORE, your deponent respectfully requests that the  
above named defendant, ROBERT ALAN KESTENBAUM, be dealt with  
according to law.

*John Mullen*  
John Mullen, Special Agent, D.E.A.

United States Magistrate  
Eastern District of New York

Sworn to before me this  
22nd day of June 1974.

*John Mullen*  
UNITED STATES MAGISTRATE  
EASTERN DISTRICT OF NEW YORK

A-7-a

UNITED STATES OF AMERICA

-vs-

*Robert Alan Rosenblum**by Attorney*

The complaint against the defendant was read and the charge was explained to him/her by the Magistrate who explained his/her rights to him/her and waived the public reading of the complaint. The defendant was advised that he was entitled to an adjournment for the purpose of engaging an attorney; that he would be given an opportunity to communicate with his/her friends and relatives; the defendant was further advised that he was under no obligation to make any statement and that any statement made by him/her could subsequently be used against him/her; that he was entitled to a hearing to determine as to whether or not there was probable cause that a crime was committed and that he committed the same and if he desired a hearing, he was entitled to the aid of counsel either of his/her own choosing, or if he could not afford counsel, such counsel as would be assigned to him/her pursuant to The Criminal Justice Act of 1964; that if after the hearing, it was determined that there existed probable cause that he committed the crime as stated in the complaint he would be held for the action of the Grand Jury.

---

74 M 927Defendant does, does not desire counselDefendant does, does not desire assigned counselDefendant does, does not waive preliminary examination

Dated: 6/1/74



UNITED STATES MAGISTRATE

The charge in the complaint has been read and explained to me. I have been advised by the United States Magistrate of my right to counsel and my constitutional rights. I do not desire an attorney at this time.

---

Defendant

In the Presence Of:

---

United States Magistrate  
Eastern District of New York

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

NOTICE OF APPEARANCE

UNITED STATES OF AMERICA :  
Plaintiff :  
:  
-against- :  
ROBERT ALAN KESTENBAUM :  
PLEASE PRINT NAME :  
:  
Defendant :  
:

DOCKET NUMBER: \_\_\_\_\_

74 MS 27

DATED: JUNE 22, 1974

DATE OF ARREST : JUNE 21, 1974

PLEASE TAKE NOTICE, that I have been retained by \_\_\_\_\_  
ROBERT ALAN KESTENBAUM, Defendant, above named.  
I was admitted to practice in this District on 1951.

SIGNATURE Irving E Field

(PLEASE PRINT YOUR NAME)

IRVING E. FIELD

OFFICE ADDRESS 310 Madison Ave, N.Y. N.Y. 10017

OFFICE TELEPHONE MU 9-5018

(If Defendant's Attorney is a Law Firm, indicate member thereof  
who is to try this case and whose professional engagements are  
to be considered in any application for adjournment.)

TO: U. S. ATTORNEY

Original to be filed in CLERK'S OFFICE

LEWIS ORGEL  
CLERK

By: \_\_\_\_\_  
Deputy Clerk

DAT3: \_\_\_\_\_

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA, : Docket No. 74-CR-687

-against- :  
ROBERT ALAN KESTENBAUM, : NOTICE OF APPEAL

Defendant. :  
----- X

NOTICE IS HEREBY GIVEN that ROBERT ALAN KESTENBAUM, the above named defendant, hereby appeals to the United States Court of Appeals for the Second Circuit from the sentence of this Court, after a plea of guilty, entered in this criminal proceeding on the 17th day of January, 1975, by the Hon.  
Thomas C. Platt.

Dated: New York, New York  
January 27, 1975

U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORK  
JAN 27 1975  
12 03 PM '75  
FILED

*Irving E. Field*  
IRVING E. FIELD  
Attorney for Defendant  
310 Madison Avenue  
New York, N. Y. 10017

(212) MU. 7-5018

A-10

United States of America vs.

DEFENDANT

ROBERT ALAN KESTENBAUM

Eastern District of New York

DOCKET NO. ➤

74 CR 683

JUDGMENT AND PROBATION/COMMITMENT ORDER AO 225 (6/74)

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH DAY YEAR  
1 17 1975

COUNSEL

WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

PLEA

WITH COUNSEL IRVING FIELD, ESQ.  
(Name of counsel)

FINDING &  
JUDGMENT

GUILTY, and the court being satisfied that  
there is a factual basis for the plea,  
 NOLO CONTENDERE,  NOT GUILTY  
There being a finding/verdict of   
 NOT GUILTY. Defendant is discharged  
 GUILTY.

MINIMED

Defendant has been convicted as charged of the offense(s) of

violating T-21, U.S.C. Sec. 844(a)  
in that on or about June 21, 1974, the defendant did knowingly and  
intentionally possess a quantity of Cannabis sativa L., a Schedule I  
controlled substance, which possession was not pursuant to a valid  
prescription or order from a practitioner acting in the course of his  
professional practice and which possession was not authorized by any  
subchapter of the Narcotics Control Act of 1970

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary  
was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is  
hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE  
OR  
PROBATION  
ORDER

THE COURT finds that the defendant was 25 years of age at the  
date of conviction and is suitable for handling under the Federal  
Youth Correction Act as a young adult offender. 18 USCA § 4209.

SPECIAL  
CONDITIONS  
OF  
PROBATION

IT IS ADJUDGED pursuant to 18 USCA § 5010(d) and 18 USCA § 3651  
that the defendant is hereby committed to the custody of the Attorney  
General or his authorized representative for treatment and supervision  
at a Youth Center for a term of 1 year on condition that the defendant  
be confined in such Youth Center for a period of 2 months, the execu-  
tion of the remainder of the sentence of confinement is hereby suspended  
and the defendant is placed on probation for a period of 3 years under  
18 USCA 5010(a) and further that the defendant is fined \$1000.00. Exe-  
cution of sentence stayed to July 1, 1975

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the  
reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at  
any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke  
probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D. NY  
★

It is ordered that the Clerk deliver  
a certified copy of this judgment  
and commitment to the U.S. Mar-  
shal or other qualified officer.

JAN 17 1975

SIGNED BY  
 U.S. District Judge  
 U.S. Magistrate

Thurman C. Blatt

TIME AM.....  
PM.....

4

IRVING E. FIELD  
ATTORNEY AT LAW  
310 MADISON AVENUE  
NEW YORK, N.Y. 10017

(212) 687-5018

January 10, 1975

Hon. J. Platt  
Judge of the U. S. District Court.  
Eastern District of New York  
Federal Building  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Robert A. Kestenbaum

Dear Judge Platt:

Today the sentencing of Robert Kestenbaum, was adjourned at your suggestion for one week so that you could discuss with the Probation Department the employment of Section 21 USC 844(b)(1) pursuant to my motion, rather than the pertinent provisions of the Youthful Offender Act.

I was unable to place before you today a statement of my reasons for requesting employment of Section 844.

I do wish to inform you that the young man is presently attending college in order to take more science courses.

He has discussed his past, present and future conduct with his family and with me at great length and has made his own decision that he would like to attend dental school. It does not seem unlikely that he would get into a dental school since he was on the Dean's List three of his four years at college.

It is for this reason that I feel that Section 844 might offer some benefit over the Youthful Offender Act to enable him to attend dental school, and use his full potentialities as a model citizen.

I, of course, do not know the court's intention in this matter, but I do feel that if consideration is being given for young adult treatment (Youthful Offender) that Section 844 might offer a benefit to the young man and no disadvantage to Society.

Respectfully yours,

*Irving E. Field*

IRVING E. FIELD

IEF:fw

FILED  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.

\* MAR 25 1975 \*

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

TIME A.M.....  
P.M.....

-----X  
UNITED STATES OF AMERICA :

-against- :

74 CR 687

ROBERT ALAN KESTENBAUM, :

Defendant. :

-----X  
United States Courthouse  
Brooklyn, New York

November 8, 1974  
10:00 o'clock A.M.

Before:

HONORABLE THOMAS C. PLATT, U.S.D.J.

ILENE GINSBERG  
ACTING OFFICIAL COURT REPORTER

I hereby certify that the foregoing is  
a true and accurate transcript from my  
stenographic notes in this proceeding.

*Glenis Finley*

Official Court Reporter  
" S. District Court

1  
2 **Appearances:**

3

4

5 DAVID G. TRAGER, ESQ.  
6 United States Attorney  
7 for the Eastern District of New York

8

9 BY: HERBERT G. JOHNSON, ESQ.  
10 Assistant U.S. Attorney

11

12 IRVING FIELD, ESQ.  
13 Attorney for Defendant

14

15 **Also present:**

16

17 Irving Kestenbaum

18

19

20

21

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25

1  
2           MR. JOHNSON: Your Honor, this matter is on  
3         for pleading and the defendant has a plea to make.

4           THE COURT: How do you wish to plead?

5           MR. FIELD: The defendant wishes to plead  
6         guilty and I request that treatment be afforded to  
7         the defendant pursuant to Section 844(b)1.

8           He is charged with 844(a), possession of a  
9         marijuana derivative.

10          He has no previous record or offense of any  
11         kind.

12          THE COURT: He wishes to plead to something  
13         other than the present information?

14          MR. FIELD: No.. He wishes to plead guilty  
15         to the present information and asks for treatment  
16         pursuant to Sub-section (B)1 of 844.

17          THE COURT: Would you object if I called you  
18         again after the rest of the criminal calendar?

19          MR. JOHNSON: No, if you wish to do that.

20          THE COURT: I would like to do that.

21          It takes a little while and I want to make  
22         sure I treat the matter properly. So, I will recall  
23         it hopefully within an hour or so.

24          (Recess taken.)

25          (After recess.)

1                   THE COURT: Do you want to show me 844(b)1?

2                   MR. FIELD: Would you like to see it, your

3                   Honor?

4                   THE COURT: Yes.

5                   I'm not sure what you have in mind and I want

6                   to be sure on this.

7                   (Document handed to Court.)

8                   MR. FIELD: There is a single count of

9                   possession under Subdivision (a), your Honor.

10                  (Pause.)

11                  THE COURT: Well, this is that the Court may,

12                  without entering a judgment of guilty and with con-

13                  sent of such person, place the defendant on probation.

14                  MR. FIELD: Yes.

15                  This is a first offense. He has never been

16                  in trouble of any kind. He has no juvenile offenses

17                  at all.

18                  THE COURT: How old is he?

19                  MR. FIELDS: 25, now.

20                  He has no record, whatsoever.

21                  This concerns possession of a marijuana

22                  derivative. It is unfortunate. As you know, there

23                  are two points of view as to whether marijuana is

24                  or is not a narcotic drug. It is perhaps the fault

25                  of our medical establishment that there are two

1 sides to this.

2 However, he does know that he will never  
3 commit this offense again.

4 He has never had any trouble with the law  
5 in any way before.

6 He now has -- he is in a training program  
7 with a big department store, training as an executive  
8 and if there is a judgment of guilty entered it  
9 might affect this work.

10 This is a wonderful opportunity for this  
11 boy and he knows that any retrogression in the  
12 future will have severe penalties. The father is  
13 here. The father is a dentist.

14 Your Honor, I am not a criminal lawyer. I  
15 represent the family and I make this plea for per-  
16 mission for the boy to pursue his way and be a useful  
17 member of society rather than having this blot on  
18 his record.

19 This offense will never recur and he cannot  
20 get this treatment ever again and he knows this.

21 THE COURT: What is the Government's position?

22 MR. JOHNSON: The Government agreed to accept  
23 a plea to the count 844(a) and filed a misdemeanor  
24 information on that agreement rather than seeking an  
25 indictment on the importation or possession or intent

1 to distribute count.

2 We take no position as to Section B. This  
3 section does say that upon a finding of guilty or  
4 plea of guilty the Court may in lieu of entering  
5 judgment, the Court may apply this section and  
6 of course, it is the Court's perogative.

7 The Government has filed an information  
8 rather than seeking indictment in this matter.

9 MR. FIELDS: One more thin, your Honor.  
10 The boy has cooperated with the authorities in  
11 every way. It is unfortunate that this was an  
12 isolated offense so he couldn't possibly be of  
13 more help than he was.

14 MR. JOHNSON: Mr. Fields is absolutely correct.  
15 Mr. Kestenbaum has been in my office, talking with  
16 drug enforcement agents but, he had no great infor-  
17 mation to give but he did seek in every way to  
18 fully cooperate.

19 THE COURT: Has the Government made a check  
20 to determine whether or not it is a fact that he  
21 has no record of any kine?

22 MR. JOHNSON: At this point I believe the  
23 indication is that the DEA made a check and found  
24 no record except that it has not received a single  
25 print report.

1                   He is not on file with the DEA, in any  
2                   event.

3                   THE COURT: One of the things, of course,  
4                   that would militate against this, in my mind, is  
5                   if he had been in trouble with the law in any way  
6                   prior.

7                   MR. JOHNSON: Of course.

8                   It is our understanding he has not been, but  
9                   of course, we don't have the FBI report.

10                  THE COURT: How soon can you get that?

11                  MR. JOHNSON: In a couple of weeks.

12                  THE COURT: What kind of education has he had?

13                  MR. FIELD: He is a graduate of Southampton  
14                  College. He was going to establish a business  
15                  abroad but he has abandoned that.

16                  THE COURT: When did you graduate, son?

17                  THE DEFENDANT: 1971, your Honor.

18                  THE COURT: Has he been employed since that  
19                  time?

20                  MR. FIELD: Yes.

21                  THE COURT: Where does he live?

22                  MR. FIELD: Scarsdale, New York.

23                  THE COURT: Has he lived there continually?

24                  MR. FIELD: He lived in Morocco, your Honor,  
25                  for a time. He was going to establish a business  
                        there.

1                   THE COURT: Oh. He attempted to run his  
2 business there.

3                   MR. FIELDS: Yes.

4                   He had a rug and other items importation  
5 business or export business, whatever it may be.

6                   THE COURT: Is there anything else the  
7 Government would wish to say?

8                   MR. JOHNSON: I presume that a pre-sentence  
9 report for the Court's consideration as to whether  
10 to apply Section (B), would be helpful to the Court.

11                  THE COURT: I would be willing to proceed  
12 with a pre-sentence report first, if this is  
13 agreeable to the defendant, but of course, he may  
14 be making certain statements to probation that would  
15 come to my attention.

16                  You could take it to another judge, I suppose,  
17 if he wished to do that.

18                  MR. JOHNSON: I have not researched Section  
19 (B) to determine whether the withholding of the  
20 entering of judgment would come at the time of sentencing  
21 or the time of plea.

22                  THE COURT: It says "Upon entering a judgment  
23 of guilty" --

24                  MR. JOHNSON: Or "upon a plea of guilty."

25                  MR. FIELD: To proceed otherwise has serious

1           implications which is why we don't attempt to  
2           proceed under the Youthful Offender or Young Adult  
3           Act.

4           He has this wonderful opportunity and any  
5           inquiry by the probation authorities might jeopardize  
6           this.

7           He would be willing to submit an affidavit in  
8           any form.

9           THE COURT: No.

10          What we are debating is the question of, if he  
11          pleads guilty and no judgment of guilty is entered  
12          whether it will come up to haunt him at a later date.

13          The question is, whether to take a plea of  
14          guilty as such today or defer a plea under a pre-  
15          sentence report as obtained but I think the Govern-  
16          ment is right.

17          The statutes call for either a conviction  
18          wherein the defendant is found guilty or upon a plea  
19          of guilty.

20          However, I think I have to take the plea,  
21          anyway.

22          MR. JOHNSON: Yes, I would think so.

23          MR. FIELDS: He would be willing, of course,  
24          to accept maximum probation of one year.

25          He has no intention of having trouble any

1 further and it would eliminate the criminal record  
2 for him except for the Court's purpose in case of  
3 a subsequent offense.

4 THE COURT: He should understand that if he  
5 enters a plea of guilty and the pre-sentence report  
6 comes up positive against him in any respect the  
7 Court may well not accept --

8 MR. FIELD: Oh, there's no problem with that.  
9 He has a speeding offense about 5 years ago and  
10 that is hardly a criminal offense.

11 MR. JOHNSON: I don't think I take counsel  
12 to say that the entering of a plea here is de-  
13 termined upon whether the treatment is granted by  
14 the Court under Section (B).

15 I certainly -- the Government's agreement is  
16 that in lieu of seeking indictment in more serious  
17 felony charges, that there would be a plea to the  
18 information.

19 I think this is a perfect consideration for  
20 the Court as to whether a plea of guilty to the  
21 information, being made, it might then consider  
22 whether it would apply Section 844(B).

23 THE COURT: I want to make it perfectly  
24 clear right now that this Court is not going to  
25 make any promise or give any indication whatsoever  
that it will accept (redacted) at this time.

1                   THE COURT: We'll await the pre-sentence  
2 report and await the Government's check of the FBI  
3 records and make that determination at the time of  
4 the date for sentence, so to speak.

5                   Whether we will proceed under 844(B)(1) or  
6 844(A) will not be decided today. I will reserve  
7 decision on that and the young man has to take his  
8 chances.

9                   MR. FIELD: He understands that.

10                  May we submit anything further?

11                  THE COURT: Yes, you may submit anything you  
12 wish.

13                  MR. JOHNSON: The Government has no objection  
14 to that.

15                  THE COURT: Mr. Kestenbaum, how old did you  
16 say you were?

17                  THE DEFENDANT: 25.

18                  THE COURT: And you have had a college education?

19                  THE DEFENDANT: Yes.

20                  THE COURT: You heard the colloquy engaged in  
21 between your counsel, Government counsel and myself  
22 up to now?

23                  THE DEFENDANT: Yes.

24                  THE COURT: Have you read these particular  
25 sections of the statute?

1                   THE DEFENDANT: Yes,

2                   THE COURT: Do you understand them?

3                   THE DEFENDANT: I think so.

4                   THE COURT: Do you understand what has been  
5                   said -- that the Government has charged you with  
6                   a lesser offense here and they believe they could  
7                   take, before a grand jury, a more serious offense  
8                   in the form of indictment. Do you understand that?

9                   THE DEFENDANT: I understand.

10                  THE COURT: And they have done this and your  
11                  counsel is asking for one step further, that you not  
12                  only be treated under Section 844(D) that you be  
13                  treated under 844(B)1 and that is up to the Court  
14                  at some later date.

15                  THE DEFENDANT: Yes, sir.

16                  THE COURT: The Court makes no promises to you  
17                  at this stage.

18                  THE DEFENDANT: Yes, sir.

19                  THE COURT: Have you been advised and do you  
20                  understand that if you wanted to go to trial under  
21                  the information charged here that you have a right  
22                  to a speedy and public trial with assistance of  
23                  counsel?

24                  THE DEFENDANT: Yes.

25                  THE COURT: And that for any such trial you

1 have a right to obtain subpoenas in your behalf.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And that you have a right to be  
4 confronted by witnesses against you?

5 THE DEFENDANT: Yes.

6 THE COURT: And you have the right to plead  
7 not guilty or persist in a plea of not guilty to  
8 this information?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And do you understand that if you  
11 went to trial the Government would have the obligation  
12 of proving your guilt beyond a reasonable doubt?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And do you understand if they  
15 failed to do so the jury would have the duty to  
16 acquit you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And do you understand if the plea  
19 is accepted you waive your constitutional rights and  
20 right to trial?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you will have the assistance  
23 of counsel at the time sentence is imposed if your  
24 plea is accepted?

25 THE DEFENDANT: Yes.

1                   THE COURT: Do you understand the charge  
2                   against you?

3                   THE DEFENDANT: Yes.

4                   THE COURT: What is that?

5                   THE DEFENDANT: Possession of a marijuana  
6                   derivative, cannabis sateva.

7                   MR. JOHNSON: It's hashish, I believe.

8                   THE COURT: Did you do what you are charged  
9                   with -- possessing marijuana?

10                  THE DEFENDANT: Yes.

11                  THE COURT: Did you do it knowingly and  
12                  wilfully?

13                  THE DEFENDANT: Yes.

14                  THE COURT: Have any promises of any kind,  
15                  including promises or suggestions as to sentence,  
16                  been made to you by the United States Attorney?

17                  THE DEFENDANT: No. My lawyer has told me.

18                  THE COURT: What promises have been made to  
19                  you?

20                  THE DEFENDANT: Oh, no promises have been made  
21                  to me at all, sir.

22                  THE COURT: What promise has your lawyer made?

23                  THE DEFENDANT: He told me perhaps what he  
24                  expects to happen but no guarantees. I have been  
25                  guaranteed nothing, sir.

1                   THE COURT: You heard the discussion and you  
2                   don't assume by this discussion that this Court has  
3                   made you any promises, do you?

4                   THE DEFENDANT: No.

5                   THE COURT: Has anyone else made any promise  
6                   to you to induce a plea of guilty?

7                   THE DEFENDANT: No.

8                   THE COURT: Has your lawyer expressed an  
9                   opinion or made any prediction as to the sentence  
10                  the Court might impose?

11                  THE DEFENDANT: He has possibly projected?

12                  THE COURT: What has he said to you?

13                  THE DEFENDANT: Just that this would be the  
14                  best course for me to follow.

15                  THE COURT: I understand that but has he  
16                  indicated to you that there is a possible sentence  
17                  of at least one year in jail for a first offender  
18                  and a fine of \$5,000 or both and if it's a second  
19                  offense or major offense it could be two years and a  
20                  fine of \$10,000?

21                  Has he explained to you that those are the  
22                  maximum sentences but there is nothing to restrict the  
23                  Court from imposing such sentence if a plea of guilty  
24                  is accepted here?

25                  THE DEFENDANT: Yes and I understand.

1                   THE COURT: Have you been forced into entering  
2                   a plea of guilty?

3                   THE DEFENDANT: No.

4                   THE COURT: Are you entering a plea of guilty  
5                   because you are guilty and for no other reason?

6                   THE DEFENDANT: Yes.

7                   THE COURT: Have you discussed the plea fully  
8                   with your attorney or do you wish more time to do it?

9                   THE DEFENDANT: No. I have discussed it fully  
10                  with my attorney.

11                  THE COURT: I have told you what the maximum  
12                  sentence could be, have I not?

13                  THE DEFENDANT: Yes.

14                  THE COURT: Have you entered into any dis-  
15                  cussions with the United States Attorney other than  
16                  what was related here?

17                  THE DEFENDANT: No.

18                  THE COURT: Having been advised as to your  
19                  constitutional rights and the nature of the charges  
20                  against you and the consequences thereof, how do you  
21                  plead to this information?

22                  THE DEFENDANT: Guilty, your Honor.

23                  THE COURT: I find there is a factual basis  
24                  for the plea of guilty and the Court will accept the  
25                  plea.

1           I will consider whether you should be sentenced  
2           under 844(B)(1), prior to the date of sentence but I  
3           should advise you that should this Court not accept  
4           this suggestion, you are entitled to be treated under  
5           the Youth Correction Act and whether you wish to be  
6           treated under the Youth Correction Act, that should be  
7           made known to the Probation Department and that is  
8           assuming the Court will not sentence you under 844(B)(1)  
9           in which event you may then decide whether you want to  
10          be treated under the Youth Correction Act or as an  
11          adult.

12          MR. FIELD: Can we take them up seriatim, one  
13          at a time?

14          THE COURT: Yes, we can take them up seriatim.  
15          Of course, neither of your requests are binding  
16          but I would like to know through the Probation De-  
17          partment what you want, assuming you don't get 844(B)(1).

18          MR. FIELD: Yes.

19          Now I move to vacate the bail bond?

20          THE COURT: What is the bail?

21          MR. JOHNSON: There is a \$25,000 personal surety  
22          bond executed by his father covering the Eastern,  
23          Southern District and New Jersey and I think the  
24          Government would agree to that request.

25          THE COURT: Has he put up that kind of money

1 for bail?

2 MR. JOHNSON: Yes, I understand he has. I was  
3 not present. It was personally signed.

4 THE COURT: But not put up as security or cash?

5 MR. JOHNSON: I don't know but in that event,  
6 I don't know that there is a need for this now.

7 THE COURT: That request would be better handled  
8 at the time of sentencing.

9 He will still be responsible for that amount  
10 if his son disappeared but assuming he shows up for  
11 sentence that will be vacated.

12 MR. FIELD: May I request the bail limits be  
13 enlarged to include the State of New York?

14 THE COURT: Any objection?

15 MR. JOHNSON: No objection.

16 THE COURT: That will be granted.

17 MR. FIELD: Thank you, your Honor.

18 THE COURT: You should go to probation right  
19 now.

20 \* \* \* \*

1 UNITED STATES DISTRICT COURT

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT ED. NY

2 EASTERN DISTRICT OF NEW YORK

★ MAR 25 1975 ★

3 UNITED STATES OF AMERICA

-----X  
TIME A.M.....  
: P.M.....

4 -against-

74 CR 687

5 ROBERT A. KESTENBAUM,

:  
6 Defendant. :  
7 -----X

8 United States Courthouse  
9 Brooklyn, New York

10 January 10, 1975  
11 10:00 o'clock a.m.  
12  
13  
14 Before:  
15 HONORABLE THOMAS C. PLATT, U. S. D. J.  
16  
17 I hereby certify that the foregoing is  
18 a true and accurate transcript from the  
stenographic notes in this proceeding.  
19 Please find below  
20 Official Court Reporter  
21 U. S. District Court  
22 ILENE GINSBERG  
23 ACTING OFFICIAL COURT REPORTER  
24  
25 A-31 8

## 1           A p p e a r a n c e s :

2  
3           DAVID G. TRAGER, ESQ.,  
4               United States Attorney  
5               for the Eastern District of New York6  
7  
8           BY: SAMUEL DAWSON, ESQ.,  
9               Assistant United States Attorney.10  
11  
12           IRVING E. FIELD, ESQ.,  
13               Attorney for Defendant.

## 14           P r e s e n t :

15           DR. IRVING KESTENBAUM.  
16  
17  
18  
19  
20  
21  
22  
23  
24           A-32  
25

1 THE CLERK: Criminal cause for sentencing,

2 U. S. A. v. Robert Kestenbaum.

3 MR. FIELD: Irving E. Field.

4 MR. DAWSON: For the Government, Samuel Dawson  
5 for Herbert Johnson.

6 THE COURT: All right.

7 Mr. Field, is there any reason why we should  
8 not proceed with sentencing at this time?

9 MR. FIELD: No, except that I would like to  
10 make a statement.

11 THE COURT: I understand that.

12 Mr. Kestenbaum, is there any reason why we  
13 should not proceed with sentencing at this time?

14 THE DEFENDANT: No.

15 THE COURT: May the record show that Mr.  
16 Kestenbaum pleaded guilty to a one count information  
17 before me on November 8, 1974, and at that time  
18 I advised Mr. Kestenbaum and his counsel that he is  
19 entitled to youth correction and treatment and they  
20 should discuss that question with the Probation De-  
partment.

21 MR. FIELD: May I say something?

22 THE COURT: Yes.

23 MR. FIELD: There was a preliminary applica-  
24 tion under Section 844(a).

25 Does your Honor want to refresh his recollec-

1 tition on that?

2 THE COURT: Yes, I do.

3 (Document handed to Court.)

4 THE COURT: I am not with you on that at all.

5 Mr. Field.

6 MR. FIELD: An application for parole, your  
7 Honor, under Section 844(a).

8 It is a first offense. There is no previous  
9 record and the report of the parole officer was  
10 supposed to be submitted to you for that purpose.

11 THE COURT: I have no such report.

12 MR. FIELD: Mr. Johnson, for the minutes,  
13 verify it.

14 THE COURT: I may be incorrect, but I have  
15 no such --

16 MR. FIELD: Your Honor will recall I had the  
17 copy of the United States Code with me and handed  
18 it up to you and I had to come back after court ad-  
19 journed to get my copy of the book.

20 THE COURT: Perhaps we should adjourn this  
21 and confer with Mr. Johnson and the Probation De-  
22 partment.

23 If there has been a special application in  
24 connection in connection with this, I prefer to make  
25 sure I don't violate anything we heretofore agreed  
upon.

1                   MR. FIELD: This was specifically discussed  
2                   with Mr. Johnson.

3                   MR. DAWSON: I cannot deny what counsel says  
4                   but if it is a matter of record, as Mr. Field sug-  
5                   gests, then Mr. Johnson would be the in the best  
6                   position to clarify.

7                   THE COURT: Yes.

8                   MR. FIELD: Your Honor will call it again?

9                   THE COURT: Yes.

10                  (Recess taken.)

11                  (After recess. Herbert Johnson, Esq. appearing  
12                  for the Government.)

13                  THE COURT: Mr. Field, during the course of  
14                  this morning, I have been thinking about this  
15                  problem.

16                  I had a conference yesterday with the Probation  
17                  Department and, by the way, I must say that  
18                  I do have some recollection of our prior conversa-  
19                  tion and that it did not enter into my conversation  
20                  with the Probation Department at all yesterday.

21                  What I would like to do, if agreeable to you,  
22                  would be to adjourn the sentence for a week.

23                  MR. FIELD: I have been here all morning,  
24                  your Honor.

25                  THE COURT: I understand that. I am not

1 criticizing that.

2 I think it is in the best interest of your  
3 client to adjourn it for a week.

4 MR. FIELD: Your Honor is going to consult  
5 the Probation Department?

6 THE COURT: Yes.

7 MR. FIELD: Is it possible for me to be  
8 present?

9 THE COURT: No.

10 I want to refresh my recollection in the  
11 course of my preliminary discussions discussions at  
12 the sentencing panel and with the Probation Depart-  
13 ment the sentence of 844(a) did not come up.

14 MR. FIELD: Mr. Johnson remembers it speci-  
15 fically.

16 THE COURT: I am not saying that he does not  
17 but I want to go back over the ground and make sure  
18 I don't do something improper and I think it  
19 is in the best interest of your client to adjourn  
20 the sentence.

21 MR. FIELD: I cannot refuse to accept if you  
22 put it that way.

23 THE COURT: I understand that it is an incon-  
24 venience to you and the others --

25 MR. FIELD: Dr. Kestenbaum cancelled all his

1 patients today and I suppose he will have to do so  
2 next week.

3 THE COURT: I understand what you are saying  
4 but, as I say, I believe it to be in the best in-  
5 terest of your client.

6 MR. FIELD: Well, then, I will return a week  
7 from today, your Honor.

8 THE COURT: Yes.  
9 \* \* \* \*

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FILED  
IN THE OFFICE OF  
U. S. DISTRICT COURT ED. N.Y.

★ MAR 25 1975 ★

1  
2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

4 - - - - - x

TIME A.M.....  
P.M.....

5 UNITED STATES OF AMERICA, :  
6 - against - : 74-CR-687

7 ROBERT A. KESTENBAUM, :  
8 Defendant. :  
9 - - - - - x

10 United States Courthouse  
11 Brooklyn, New York

12 January 17, 1975  
13 10:00 o'clock a.m.  
14 Before:  
15 HONORABLE PLATT, U.S.D.J.  
16  
17  
18 I hereby certify that the foregoing is  
19 a true and accurate transcript from my  
stenographic notes in this proceeding.  
20  
21 Official Court Reporter  
22 U. S. District Court  
23 *Henry Le Gendre*  
HENRY LE GENDRE  
24 ACTING OFFICIAL COURT REPORTER  
25

4

A-38

1

## 2 Ap p e a r a n c e s :

3

4 DAVID G. TRAGER, FSO.  
5 United States Attorney  
for the Eastern District of New York

6 BY: A. R. NEFTALIS, ESO.  
7 Assistant United States Attorney

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9

10 IRVING FIELD, ESO.  
11 Attorney for Defendant.

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1                   THE CLERK: Criminal cause for sentencing,  
2                   United States of America versus Robert A. Kestenbaum.

3                   THE COURT: Mr. Field, any reason why we shouldn't  
4                   proceed with the sentencing.

5                   MR. FIELD: No, except I would like to make a  
6                   statement.

7                   THE COURT: Mr. Kestenbaum, is there any reason  
8                   why we shouldn't proceed?

9                   THE DEFENDANT: No, your Honor.

10                  THE COURT: Mr. Field, do you wish to make a  
11                  statement?

12                  MR. FIELD: I think your Honor has stated that  
13                  you would consider Section 844.

14                  THE COURT: Yes.

15                  MR. FIELD: If I may address myself to that,  
16                  there is something in the probation report that I  
17                  would like to amplify, if I may.

18                  I wrote your Honor a letter stating that Robert  
19                  Kestenbaum was on the Dean's list, three out of four  
20                  years at Southampton College, and I have an unofficial  
21                  transcript, if your Honor wants to see it. If you  
22                  need any confirmation of my statement --

23                  THE COURT: I had the Probation Department fur-  
24                  nish me with information concerning his college  
25                  background.

1                   MR. FIELD: In the report they didn't mention  
2                   it.

3                   THE COURT: I asked for it to be furnished.

4                   MR. FIELD: I do wish to state initially that  
5                   Robert pleaded guilty to this. He stated everything  
6                   that he knew fully to the U.S. Attorney's office  
7                   and to the agents. No conditions were imposed, no  
8                   deals were made. He stated this without reservation  
9                   and I imposed no conditions on it either.

10                  He realized fully the extent of his offense  
11                  and wanted to do anything he could to alleviate what  
12                  he had done and to expiate himself. I would like  
13                  to first state that this is an offense not of hard  
14                  drugs, but this is possession of marijuana. Under  
15                  present conditions there seems to be differentiation  
16                  in the mind of a young person between hard drugs  
17                  and marijuana. I'm a parent myself, I've spoken to  
18                  my daughters, one is Robert's age and the other is  
19                  younger.

20                  I've spoken to numerous other people about the  
21                  prevalence of the use and dispensing of marijuana  
22                  on college campuses and everywhere else in the high  
23                  school, even in the elementary school.

24                  There seems to have arisen a mistake which  
25                  distinguishes marijuana. On hard drugs, Robert told

1 me he never would have dealt in hard drugs in any  
2 fashion. He's never taken hard drugs and he would  
3 never participate in anything like that.

4 The problem about marijuana is universal.

5 Apparently Congress has begun to recognize the fact  
6 that there is such widespread use that it should be  
7 permitted when compared with the deleterious results  
8 of alcohol and smoking.

9 As I said Congress is apparently recognizing  
10 this now. Various state legislatures are beginning  
11 to act in making marijuana -- the possession of mari-  
12 juana a non-criminal offense.

13 It's with this background that I wish to make  
14 my statement.

15 First I wish to state a Robert's positive ac-  
16 complishments. No previous arrest. No previous con-  
17 victions. No previous trouble of any kind. He's  
18 been an exemplary citizen. Not only had he attained  
19 the rank of Eagle Scout in the Boy Scouts of America,  
20 he spent a great deal of time and energy with the  
21 younger people in the scouts. His religious leader  
22 has sent you a letter. His scout master, who is one  
23 of the educators of Ring Magazine has sent you a letter.

24 His employer at Bloomingdale Department Store  
25 has sent you a letter, vouches for him completely,

1 and any other number of letters could be obtained.  
2 His father is a dentist and his mother was a physical  
3 therapist at one time.

4 There has been no indication in their house-  
5 hold as to how this could have arisen. As I say, in  
6 view of the popular feeling in the younger people  
7 about marijuana, his life has been completely exem-  
8 plary up to now.

9 And this offense will never be committed again.

10 I could say this unequivocally, he will never have  
11 any trouble again. He learned his lesson. It has  
12 been a very bitter experience for him. Everybody  
13 agrees it's been a very substantial shock for him  
14 and he's learned that the law is the law whether you  
15 agree with it or not.

16 He has discussed at length with his family  
17 and myself the question of his continuing a professional  
18 career. His days when he wanted to be a merchant  
19 in Marrakesh are gone. Not desire to pursue this.  
20 This has been a completely shocking occurrence for  
21 him. He will never again be engaged in anything like  
22 this. It's been a shock for him. It's been a ter-  
23 rible shock for his family, and I ask your Honor  
24 respectfully to employ Section 844B; it's a first  
25 offense. This is a section where his past is com-

1 pletely clear and beneficial to society, and I think  
2 the 844 is not employed in a case like this.

3 It's just on the books for no purpose.

4 THE COURT: DO you have anything to say, Mr.  
5 Kestenbaum?

6 THE DEFENDANT: I accept responsibility for  
7 my actions.

8 THE COURT: Mr. Field, this case probably  
9 more than any other case that I have had since I  
10 have been here, which isn't that long, has given me  
11 more trouble than any other case. I don't mind telling  
12 you that I gave 844B every consideration, and I  
13 have had lengthy discussion with the Probation Depart-  
14 ment about this whole matter.

15 I can't find it in my thinking that 844B was  
16 meant to apply to this situation.

17 I think Mr. Kestenbaum, you have received a  
18 remarkable break, if I can put it that way, from the  
19 United States Attorney's office in the reduction of  
20 what would otherwise be a major Federal offense.

21 The violation of 852 -- 952 and 960, I guess  
22 it is Title 21, United States Code, which is fifteen  
23 years and a twenty-five thousand dollar fine offense,  
24 and to have the charge reduced to an 844 offense in  
25 the first instance was a substantial break, that

1 already has been given to you. I understand what you  
2 say, this man undoubtedly never will commit another  
3 offense again, but I think there has to be some  
4 minimum punishment.

5 I've tried to devise that in the best way I  
6 know. It's taken into consideration all of the facts  
7 that have been presented to me, and I realize the  
8 punishment is not going to hurt you Mr. Kestenbaum  
9 as well as it's going to hurt your mother and father,  
10 and indeed, if I do anything to negate punishment  
11 to them I would do it, but I feel there must be some  
12 minimum punishment.

13 So the Court finds the defendant who is  
14 twenty-five years of age and is suitable for handling  
15 under the Youth Offender Act, 18 U.S.C. 4209, it is  
16 adjudged pursuant to 18 U.S.C. Section 5010D in 18  
17 U.S.C. 3651, that the defendant is hereby committed  
18 to the custody of the Attorney General or his duly  
19 authorized representative for treatment and supervi-  
20 sion at a youth center for a term of one year on  
21 condition that the defendant be confined in such  
22 youth center for a term of two months, the execution  
23 of the remainder of the sentence of confinement is  
24 hereby suspended and the defendant is placed on pro-  
25 bation under 18 U.S.C. 5010A for a period of three

1           years, and further that the defendant is fined in  
2           the sum of \$1,000.

3           MR. FIELD: Your Honor, may I ask that your  
4           Honor reconsider.

5           THE COURT: I've considered this case, Mr.  
6           Field in every possible way that I could and I think  
7           this is the only judgement that I could reach.

8           MR. FIELD: Is it possible just to increase  
9           the time of probation and have him on probation in-  
10          stead of being in a youth center?

11          THE COURT: I have him on probation for a  
12          period of three years and I believe that's adequate  
13          under these circumstances.

14          The punishment and absolute minimum of two  
15          months -- and I think that this defendant has received  
16          every possible consideration that could have been  
17          received under normal circumstances in an offense of  
18          this kind. He could have anticipated a minimum sen-  
19          tence of three years and not at a youth center.

20          MR. FIELD: May I ask --

21          THE COURT: I've done everything I could,  
22          I really have.

23          MR. FIELD: It would be a terrible blow to  
24          his parents. It's only a question of two months.

25          THE COURT: I recognize that. A youth center

is not the same as it might otherwise have been.

MR. FIELD: It's still the sentence, your

THE COURT: That is the sentence. That's the sentence of this court.

MR. FIELD: Would your Honor suspend the stay at the youth center?

THE COURT: No, I will not, not in view of the magnitude of the offense here.

MR. FIELD: I'm sorry, your Honor.

THE COURT: I am too, believe me.

MR. FIELD: He's attending school, can this  
two months be served in between semesters?

THE COURT: I'll let him serve it in the summer.

MR. FIELD: Will you let him serve it this  
?

THE COURT: I'll let him serve it -- what date does he get out of school.

MR. FIELD: The summer should be all right.

THE COURT: I'll let him surrender on July 1st,  
at 10:00 a.m. He should pay the fine before that.

Is he on bail?

MR. NEFTALIS: He's on a \$25,000 personal recognizance signed by his father.

THE COURT: That will be continued.

1 MR. FIELD: Can we have that discharged?

2 THE COURT: Not until July 1st.

3 (Whereupon Court stood in recess in this  
4 matter.)

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STATE OF NEW YORK )  
: SS.  
COUNTY OF RICHMOND )

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 25 day of April, 1975 deponent served the within upon U.S. Atty., Eastern District of New York

attorney(s) for

Appellee

in this action, at

225 Cadman Plaza East, Brooklyn, N.Y.

the address(es) designated by said attorney(s) for that purpose by depositing true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

.....*Robert Bailey*.....  
ROBERT BAILEY

Sworn to before me, this  
25 day of April, 1975.  
*William Bailey*  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43 0132945  
Qualified in Richmond County  
Commission Expires March 30, 1976